

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 3661 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PADAM SAMBHAV JAIN - Petitioner
Versus
UNION OF INDIA & 3 - Respondents

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= Appearance :

MR HARNISH V DARJI for Petitioner : 1,

RULE SERVED for Respondents : 1 - 3.

MR MANISH R BHATT for Respondents : 4,

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CORAM : HONOURABLE MR.JUSTICE
S.R.BRAHMBHATT

Date : 26/11/2007

ORAL JUDGMENT

1. The petitioner has preferred this petition under Article

226 of the Constitution of India interalia praying issuance of writ of mandamus or any other appropriate writ to the respondents for paying reward amount upto 10% of the amount of taxable income found from the place of Vimla Silk Mills Private Ltd and his associated group during Income Tax search made under Section 132 of the Income Tax Act from 12.7.1988 to 16.7.1988 at Surat as the said raid was initiated on the information furnished by present petitioner.

2. The facts in brief deserve to be set out as under.
3. The petitioner, who is said to have been informant to the Income Tax Department and used to give information with regard to evasion of income tax by the various assesses, based whereon search was carried out and the tax was recovered. The petitioner has submitted that in the year 1985, the Department introduced the schemes for rewards on giving the information to the department with regard to the concealment of the income and non-disclosure of the wealth. The petitioner put his life in risk and number of times given information to the respondents in respect of concealment of income and non-disclosure of wealth and evasion of tax. The petitioner informed the department vide serious of letters since 17.8.1987 to 18.2.1988 that one of the assess being M/s. Vimla Silk Mills Pvt. Ltd. Surat and their associates M/s. Amar Construction and others with regard to income tax concealment and non-disclosure of the assets. Pursuant to his information, the department carried out search under the provisions of Section 132 of the Income

Tax Act from 12.7.1988 to 17.7.1988 at Surat at different premises. The petitioner has also relied upon the press note wherein, statement regarding nondisclosure of the income has been made. The petitioner is not being given the reward pursuant to the raid carried out on his information.

4. The respondents have filed affidavit-in-reply resisting this petition on various ground, wherein, one of the ground is that reward is in fact by way of administrative instruction and it is only based on the actual amount that is realised by way of tax on undisclosed income. At the relevant time, when the affidavit was filed, the assessment had not been completely over and it is averred in the affidavit-in-reply that the petitioner had in fact been paid the interim reward of Rs.10,000/- and the final reward could not have been paid as the assessment had not been finalized yet. It is also contended that the petition under Article 226 of the Constitution of India claiming reward amount cannot be maintainable.
5. Heard Mr. Darji, learned counsel for the petitioner and Mr. Manish Bhatt, learned counsel for respondent No. 4.
6. Shri Darji, learned counsel for the petitioner has submitted that the fact remains to be noted that the petitioner had in fact been worked as informant with the respondent department and sufficient documents have been produced on record to show that the department in fact did rely on his information and upon the information, search under Section 132 of the Income Tax Act was

carried out. The reply filed way back on 19th November, 1999 would be of no avail to the respondent in denying claim of the petitioner in as much as in the year 2007 the department does have specific figure as to what was actual tax recovered pursuant to the information given by the petitioner. Shri Darji has submitted that the petition is maintainable as even if it was an administrative instructions to give reward, the petitioner has risked his life in giving information and therefore, the risk taken by the petitioner deserves to be duly rewarded. The quantum of reward at the best cannot be the subject matter of adjudication, however, denial of reward would amount to arbitrarily denial, which deserves to be quashed and set aside and appropriate direction deserves to be issued to the Income Tax Department for giving the petitioner the reward.

7. Shri Bhatt, learned counsel appearing for the respondent has submitted that the petition itself is not maintainable as it is decided by various courts that petition filed for seeking direction to the department for determining reward amount were held to be not maintainable. Shri Bhatt has placed reliance upon the decision of Allahabad High Court in case of **RAM BARAN MISRA VS. UNION OF INDIA AND OTHERS**, reported in (1998) 234 ITR p.431. The Division Bench of the Allahabad High Court while dismissing the petition observed as under:

“If the contention be that it is a fundamental right of the petitioner to have an occupation as an “informer”, the court has reservations on such a

claim. Regard being had to the contents of the *Search and Seizure Manual*, the occupation of an “informer” and remuneration is directly related to the quality of the information and its result. The reward will be directly proportionate to the quality and content of information. Snooping on tax evaders is the business of the tax-man. But, the aides who facilitate locating hidden income have a special code of conduct with the Income-tax Department, which cannot be enforced by the High Court in its writ jurisdiction.

This is not a case in which the High Court would like to issue a writ to the respondents. The petitioner may seek remedies as he may be advised.

The writ petition is misconceived and is, accordingly, dismissed.”

8. The High Court of Kerala in case of **E. SANKARAN VS. UNION OF INDIA AND OTHERS**, reported in (2007) 288 ITR 578 (Ker), while dismissing the petition filed by one of the informant held that the courts are ordinarily not to sit as an appellate authority over the decision of the Committee determining the reward amount. In this case, it must be noted that the issue was not that of denial of reward amount. It was the amount, which was to be given as reward and in view of that, Court observed that Committee has taken a proper and just decision on the facts and circumstances and this was not a matter in

which the High Court, in exercise of writ jurisdiction, was to adjudicate as if it were sitting in appeal against the said decision.

9. The High Court of Patna in case of **V.K.AGRAWAL VS. UNION OF INDIA AND OTHERS**, reported in (2002) 254 ITR p.618 observed as under:

“Plainly the issue before the Court is whether a writ may issue on such a petition.

There is no issue before the court that the law has not provided whether under the Income-tax Act, 1961, or the rules framed thereunder that there is any statutory liability on behalf of the Department, that a percentage of the monetary value of the assets discovered will be delivered to the informer. The petitioner's petition is no better than an informer to the Ministry of Finance and is analogous to an informer to police agencies.

The petitioner ran the risk of collecting intelligence and his status was no better than that of a snooper prying and picking up information and delivering it to the Income-tax Department for the purposes of receiving a prize.

The court has reservations whether such arrangements may be a contract enforceable by a court of law. On this, the court also relies on a decision in the case of Rama Baran Misra V. Union of India [1998] 234 ITR 431 (All).

Thus, no writ is being issued in this petition.

Dismissed.”

10.The Bombay High Court in case of **MOTILAL KISHANGOPAL THANVI vs. UNION OF INDIA AND OTHERS**, reported in (2000) 242 ITR p.657 has also in a suit filed by one of the informant held that the guidelines at the best could be treated as contract between the parties.

11.In view of the aforesaid discussion, this Court is of the considered view that the petitioner cannot as a matter of right claim 10% of the reward amount. His petition for seeking any direction or writ of mandamus for enforcing administrative instruction in their behalf would therefore not be maintainable. It is not the case that respondent denied payment of reward amount to the petitioner. Had it been the case, then, it would assume different colour all together. In the instant case, when the petitioner approached this Court, he in fact was actually paid an amount in accordance with the guidelines or an administrative instruction and it is averred by the deponent in the affidavit-in-reply filed by respondent that issue had not been finalized yet and therefore, on that count also, the present petition would not be maintainable. The petition, therefore, required to be dismissed. However, while dismissing this petition, this Court is of the view that the said dismissal shall not come in the way of the petitioner in availing remedy available to him under law including approaching the department for appropriate relief and payment of reward and it is expected that the department would deal with such

representation in accordance with the guidelines.

12.The petition shall stands disposed of accordingly. Rule is discharged. There shall be no order as to costs.

(S.R.BRAHMBHATT, J.)

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